

REMARKS

In view of the above amendments and following remarks, the Examiner is respectfully request to withdraw the rejections and allow Claims 1 and 3-21, the only claims pending in this application.

Claim 1 has been amended to recite that the plurality of distinct microbial species includes at least one of: *Bacillus thuringiensis*, *Curtobacterium* sp., *Arthrobacter paraffineus*, *Pseudomonas fluorescens* and *Comomonas acidovorans*. Support for this amendment can be found in the specification, for example at page 18, lines 1-14 and page 5, lines 21-24.

Claim 21 has been added. Support for this claim may be found in the specification, for example at page 5, lines 16-17.

The above amendments introduce no new matter to the application. Accordingly, entry of the above amendments by the Examiner is respectfully requested.

REJECTION UNDER 35 U.S.C. §103(a)

Claims 1, 3-8, 10-13, 14 and 17-19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Reinbergen (WO 97/31879). The Applicant respectfully submits that Claims 1, 3-8, 10-13, 14 and 17-19 are patentable over Reinbergen.

Independent Claim 1, and Claims 3-8, 13-14 and 17-19 by virtue of their dependency therefrom or incorporation of the compositions thereof, as amended recite a composition that includes at least one of: *Bacillus thuringiensis*, *Curtobacterium* sp., *Arthrobacter paraffineus*, *Pseudomonas fluorescens* and *Comomonas acidovorans*. Accordingly, Reinbergen must teach or suggest a composition that includes at least one of these microbial species in order to render these claims unpatentable.

However, Reinbergen does not teach any of these microbial species, and thus does not teach a composition that includes at least one of these microbial species. Furthermore, Reinbergen does not even suggest a composition that includes at least one of *Bacillus thuringiensis*, *Curtobacterium* sp., *Arthrobacter paraffineus*, *Pseudomonas fluorescens* and *Comomonas acidovorans* as Reinbergen specifically describes numerous microbial species of interest, but does not make mention of any of the species recited in the claims. Accordingly, Reinbergen does not render unpatentable Claims 1, 3-8 and 13-14 and 17-19 for at least this reason.

In regards to Claims 10-12 which recite a composition having a plurality of distinct microbial species made up of at least 5 different bacterial species and at least 2 different fungal species, Reinbergen does not teach or suggest a compositions that must have at least 5 different bacterial species and at least 2 different fungal species, each of which possesses all of the claimed limitations. Furthermore, none of the specific examples of compositions taught in Reinbergen include at least 5 different bacterial species and at least 2 different fungal species. In fact, Reinbergen does not even teach or suggest a composition that includes at least 5 bacterial species and at least 2 fungal species, let alone a composition that includes at least 5 different bacterial species and at least 2 different fungal species.

While the Examiner acknowledges that Reinbergen does not disclose a composition containing at least 5 different bacterial species and at least 2 different fungal species, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to modify the composition of Reinbergen by making it with at least 5 different bacterial species and at least 2 different fungal species. As the Examiner has thus far not pointed to any reference of record to support this assertion, the Applicants respectfully request the Examiner to withdraw this rejection or cite to a reference of record or provide an affidavit by the Examiner that would support the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the composition of Reinbergen by making it with at least 5 different bacterial species and at least 2 different fungal species.

Accordingly, the Applicant respectfully submits that Reinbergen fails to teach or suggest a composition that includes at least 5 different bacterial species and at least 2 different fungal species and nowhere in the art of record is motivation provided to modify the Reinbergen compositions to include at least 5 different bacterial species and at least 2 different fungal species. As such, the Applicants respectfully request that this rejection of Claim 10-12 as unpatentable over Reinbergen be withdrawn for at least this reason.

Claims 9 and 16 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Reinbergen in view of Kosanke et al. (US 5,695,541). The Applicant respectfully submits that Claims 9 and 16 are not unpatentable under 35 U.S. C. §103 over Reinbergen in view of Kosanke et al.

Claim 9 depends from Claim 1 and Claim 16 incorporates the composition of Claim 1. As described above, Reinbergen does not render Claim 1 unpatentable for at least the reason that Claim 1

recites a composition that includes at least one of *Bacillus thuringiensis*, *Curtobacterium* sp., *Arthrobacter paraffineus*, *Pseudomonas fluorescens* and *Comomonas acidovorans*, but Reinbergen fails to teach or suggest a composition that includes at least one of *Bacillus thuringiensis*, *Curtobacterium* sp., *Arthrobacter paraffineus*, *Pseudomonas fluorescens* and *Comomonas acidovorans*. As Kosanke et al. is cited solely for growing microbes on complex substrates, Kosanke et al. fail to overcome the deficiencies of Reinbergen. Accordingly, the Applicant respectfully submits that a proper *prima facie* case of obvious can not be met for at least this reason. Accordingly, the Applicants respectfully request that the rejection of Claims 9 and 16 under 35 U.S.C. §103(a) over Reinbergen in view of Kosanke et al. be withdrawn.



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USSN: 09/695,531

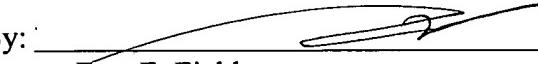
CONCLUSION

In view of the above amendments and remarks, this application is considered to be in good and proper form for allowance and the Examiner is respectfully requested to pass this application to issue.

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-0815, reference no. YAMA-008.

Respectfully submitted,
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